

S.B. Civil Misc. Appeal No.789/2006

Brijendra Pal Singh and another.

vs.

Kartar Singh and another.

Date : 11.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. VK Agarwal, for the appellants.

Mr. Hemant Jain, for the respondents.

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At the request of learned counsel for the parties, this appeal is finally heard and decided.

According to learned counsel for the appellants, the property in question is ancestral property. For this, learned counsel for the appellants pointed out that the appellants' grand father Atma Singh gifted the property to the appellants' father Kartar Singh in the year 1953. According to learned counsel for the appellants, the appellants' grand father gifted the property to Kartar Singh for benefit of Kartar Singh's family and not with an intention to gift the property to Kartar Singh alone. It is submitted that in view of judgment of the Hon'ble Supreme Court delivered in the case of Commissioner of Income Tax, Madhya Pradesh vs. Maharaja Bahadur Singh and others reported in (1986) 4 SCC 512, it is clear that even self acquired property can be gifted by the father to his son

for the benefit of son's family and also can be gifted to his son for his own use making him alone owner of the property. It is also submitted that in the gift deed, copy of which has been shown by learned counsel for the appellants, there is mention that the property has been given for maintenance (परवरिश) of Kartar Singh which means that the property was meant for the benefit of Kartar Singh's family. It is submitted that in the year 1953, Kartar Singh was married and had one son appellant no.1 Brijendra Pal Singh. It is also submitted that Kartar Singh sold the said property received by him from his father in the year 1963 by four registered sale deeds and out of the proceeds of said sale, he purchased another agricultural land by four registered sale deeds. Therefore, in sequence, the properties in the hands of Kartar Singh are ancestral properties and the appellants who are sons of Kartar Singh are having share in the properties, therefore, Kartar Singh cannot sell the property.

However, after dismissal of the injunction application by the court below by order dated 3.3.2006, Kartar Singh has sold 11 bighas of land but has executed a registered sale deed only for 1 bigha. It is also submitted that father has no right to sell the ancestral or joint Hindu family property unless there is a legal necessity for sale of the property.

Learned counsel for the appellants submitted that during pendency of the appeal, the respondents have no right to sell the property. Learned counsel for the appellants also provided the copies of the sale deeds

executed by Kartar Singh in the year 1963 and the sale deeds by which he purchased other properties.

It will be relevant to mention here that the properties gifted by the deed of 1953 were agriculture land and they were sold in the year 1963 and the the properties purchased by Kartar Singh are also agriculture land.

The trial court dismissed the injunction application of the appellant by the order dated 3.3.2006. Hence, this appeal.

It appears from the gift deed of 1953 that despite the fact of having wife and children of Kartar Singh, the gift deed was executed in favour of Kartar Singh alone which prima-facie appears from the gift deed of the year 1953. There is no mention in the gift deed that the property has been gifted for the "परवरिश" of entire family of Kartar Singh. Be it as it may be. At that time, one of the plaintiff/appellant was alive. Defendant Kartar Singh – father of the appellants sold the properties in the year 1963 by specifically mentioning that he is the sole owner of the properties. These sale deeds were not challenged by the appellants at any point of time on the ground that Kartar Singh had no right to sell the properties and the appellants are co-owners of the properties. In the year 2005, after 49 years, the dispute has been raised by the appellants – two sons of the defendant no.1, by filing the suit against their father and mother. Kartar Singh's daughter, who is sister of the appellants, has not been

impleaded as party in the suit, for which according to learned counsel for the appellants, the reason is that she married to a Muslim and, therefore, is not entitled to any share in the property of Kartar Singh.

In view of the facts mentioned above, it appears that the court below has not committed any error of law in dismissing the injunction application of the appellants as prima-facie it is not proved that the properties in question are ancestral or purchased from ancestral funds.

In view of the above, no reason arises for interference in the order passed by the court below by the appellate court as the court below has considered the facts of the case and thereafter, has refused the injunction.

Consequently, this appeal, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya